

## **CIEL Participates in the Sixth World Trade Organization Ministerial Conference in Hong Kong, China**

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### **The Hong Kong Ministerial Conference of the World Trade Organization A CIEL Update, 22 December 2005**

Environmental issues, addressed only tangentially at the Sixth Ministerial Conference of the World Trade Organization (WTO), will be among the difficult topics left on the table for 2006. While some progress was made on disciplining fisheries subsidies, discussions and decisions over other environmental issues were postponed. In particular, topics that remain highly controversial include: ensuring a mutually supportive relationship between WTO rules and multilateral environmental agreements (MEAs), identifying environmental goods for the reduction of tariff and non-tariff barriers, and introducing disclosure requirements for inventions using genetic resources and traditional knowledge in the Agreement on Trade-related Intellectual Property Rights (TRIPS Agreement).

#### *Leaving the difficult decisions for 2006*

Last week's WTO Ministerial meeting resulted in a deal lacking both specific numbers and formulae for cutting tariffs and subsidies. But the 149 Members did commit to pursue the Doha Round of trade negotiations, which is planned to conclude by the end of 2006 (after the original January 1, 2005 deadline was missed). Additionally, in agriculture developing countries achieved the establishment of 2013 as the end-date for eliminating agricultural export subsidies. However, the question of modalities remains open. Similarly, there was some agreement on cotton, as well as on the least-developed countries' request for duty- and quota-free market access. Here too, however, it is unclear what concrete benefits the new commitments will achieve. Finally, although developing countries managed to resist the proposed mandatory text on services, the services text continues to pose potential threats to developing countries' policy space for sustainable development.

#### *Environment-related issues in Hong Kong*

With the discussions focusing on a limited set of issues that needed to be resolved in order for the negotiations to move forward in other areas, a number of other issues, including environment-related ones, were not discussed, or were only discussed tangentially. Paragraph 51 of the Doha Mandate calls on Members to bring environmental and developmental considerations into all aspects of the negotiations.

At this stage, it seems that negotiations are not fulfilling this mandate: environmental considerations were absent in the ongoing negotiations on agriculture, non-agricultural market access (NAMA) and services. The negotiators also chose not to focus on the specific environmental mandates of the Doha Round, which include:

- the relationship between WTO rules and multilateral environmental agreements (MEAs);
- the issue of environmental goods and services;
- the relationship between the Convention on Biological Diversity (CBD) and the TRIPS Agreement; and
- fisheries subsidies.

#### *Relationship between WTO rules and trade-related measures in MEAs*

The relationship between WTO rules and MEAs was not expected to be a topic for discussion in Hong Kong. In a surprise move, however, the European Communities indicated the desire to discuss this relationship when the meeting was already underway. In the end, however, the issue was left out of the Hong Kong negotiations.

#### *Environmental goods and services*

As expected, the issue of environmental goods and services was most actively discussed. Paragraph 31 (iii) of the Doha Mandate calls on Members to reduce or eliminate tariff and non-tariff barriers on environmentally beneficial goods and services. In this context, the negotiators continued their discussion on whether to use a 'list approach' (which would identify a list of specific environmental goods), or an alternative approach, including India's 'environmental project approach' (which would allow countries to reduce or eliminate tariffs on goods linked to environmental projects designated by a national authority). No consensus was reached on how to move forward, however, and the negotiations resulted in a short instruction to Members to "expeditiously complete the work" under Paragraph 31(iii).

#### *Disclosure requirements*

Despite calls from several developing countries for the Hong Kong Ministerial Declaration to pave the way for negotiations on the issues pertaining to the relationship between the TRIPS Agreement and the CBD, particularly in relation to disclosure requirements, the final text maintains the ambiguity that has led some developed countries to deny the need to negotiate an amendment to the TRIPS Agreement. For example, discussions on the relationship between the TRIPS Agreement and the CBD are set to continue under Doha Paragraph 19, as well as in the context of implementation issues, on which countries have requested consultations to intensify and have established 31 July 2006 as a deadline for appropriate action.

### *Fisheries Subsidies*

The issue of fisheries subsidies received some attention from the media, as a result of a high-level press conference convened by the UN Environment Programme and the World Wildlife Fund. But the section of the draft text on WTO rules, which covers anti-dumping, subsidies and countervailing measures, including fisheries subsidies, remained unchanged in Hong Kong. The text calls on Members to strengthen disciplines on fisheries subsidies, including by identifying and prohibiting subsidies that contribute to over-capacity and over-fishing. The explicit link between fisheries subsidies to over-capacity and over-fishing was an important achievement in the lead-up to Hong Kong. The effectiveness and the relevance of this acknowledgement will depend on the specific language that will be used in the final deal.

### **Watching the environment in 2006**

The discussions at the WTO will continue to focus primarily on the agriculture, non-agricultural market access (NAMA) and services. In all of these negotiations, CIEL will continue to be watchful of potential environmental and social impacts. For example, how will the liberalization of forest products affect forest management in poorer countries? And can and will these potential problems be addressed?

The specific environmental issues identified in the Doha mandate are likely to receive less attention, but will be addressed in one way or another before the end of the negotiating round. In addition, on issues such as disclosure requirements, the active participation of the environmental community is fundamental to ensuring intellectual property rules do not continue to undermine the effective implementation of the CBD. Thus, the environmental community must stay engaged and vigilant to ensure that the outcome is the best possible.

### *The Relationship between WTO rules and MEAs: Ensuring that the WTO does not weaken MEAs*

The environmental community will be watchful so that the issue of the relationship between WTO rules and MEAs not be used as a bargaining chip in other areas of negotiations. It is well known that developing countries fear certain outcomes of paragraph 31(i). Developed countries should not use this fear to strengthen their negotiating power in other areas: the environment cannot be traded away.

In this context, CIEL will carefully monitor and influence the various potential outcomes of the MEA-related mandate. In particular, while offering limited opportunities for strengthening MEAs, the language of paragraph 31(i) also involves some risk that the status of MEAs may be weakened, and any such outcome must be avoided. It is essential to keep in mind that specific negotiated terms and phrases will ultimately influence any decision of the WTO dispute settlement body involving an MEA.

*Environmental Goods: Encouraging the use of environmentally beneficial goods*

CIEL will actively engage the discussions relating to the negotiations on environmental goods and services. These negotiations are not just about market access - those are already covered in the Negotiating Group on Market Access - but have environmental goals. CIEL is of the view that any discussion here should also incorporate goods that are produced or harvested in an environmentally preferential manner, including organic agriculture or environmentally sustainable forest management, areas of primary interest for many developing countries.

*Disclosure Requirements: Ensuring a mutually supportive relationship between the CBD and the TRIPS Agreement*

Intellectual property-related issues have been identified as a fundamental component of the development dimension of the Doha Round of negotiations. In particular, developing countries have highlighted the importance of ensuring the TRIPS Agreement does not undermine the CBD, by allowing the granting of patents for inventions that use genetic material and associated knowledge without requiring compliance with its provisions. Because the CBD is considered the single most important international agreement designed to both protect biodiversity and ensure its sustainable use, promoting its effective implementation is also critical from the environmental perspective. The focus on disclosure requirements as a tool to ensure a mutual supportive relationship has received wide and cross-regional support in the Council for TRIPS, and is also in line with the most recent assessments by other international organizations, countries, academia, and civil society. CIEL will continue to monitor and actively contribute to negotiations towards an amendment to the TRIPS Agreement to ensure intellectual property rules promote sustainable development.

*Fisheries Subsidies: Linking fisheries subsidies to over-capacity and over-fishing*

The territory gained to address the fisheries subsidies in the WTO will also depend largely on the specific language used linking subsidies to over-capacity and over-fishing. CIEL intends to actively engage and support the groups that have spear-headed this issue with its legal drafting expertise.